FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 245/2005
(Rajendra Mansukhlal Sangani & anr. VERSUS Sheshrao Dadaji Futane & anr.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. V.S. Dhote, Adv. for the appellants.
Mr. Dhumale h/f Mr. Parchure, Adv. for R-1.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 17th August, 2007.

Heard the learned counsel for the parties.

The appellants are the objectors before the Executing Court. A suit was filed by the respondent no.1/plaintiff in the year 1990 for recovery of possession against the original tenant in the suit property. It is the case of the respondent that during the pendency of the civil suit filed by the respondent against the tenant, the appellants were induced in the suit property by the original tenant. The suit filed by the plaintiff against his tenant is decreed and the judgment and decree passed by the trial Court attained finality. The respondent, therefore, filed execution proceeding against the tenant. In the said execution proceeding, the present appellants filed an objection under Order XXI, Rule 97 read with Section 102 of the Civil Procedure Code. It was the case of the Objectors/

appellants that the decree could not have been executed against them and their possession was liable to be protected as they were inducted in the suit property prior to the institution of the suit by the respondent against the original tenant and the respondent/plaintiff was very well aware of the aforesaid fact. The Executing Court, however, dismissed the objection raised by the appellants and observed that the appellants were inducted in the suit property during the pendency of the proceedings initiated by the respondent/plaintiff against the original tenant and, therefore, the objection filed by the appellants was not tenable under the provisions of Order XXI, Rule 97 of the Code of Civil Procedure. The Court further held that the principle of lis pendens would also apply to the facts of the case and, therefore, the present appellants could not have claimed any right other than the right which was vested in the tenant. The Executing Court held that since the judgment passed by the trial Court in the suit filed by the respondent against the original tenant, had attained finality, the possession of the appellants could not be protected. An appeal was filed by the appellants against the order passed by the Executing Court on the objection raised by the appellants. The appeal was dismissed by the order dated 18/1/2005.

The findings recorded by both the Courts

are pure findings of facts which do not give rise to any substantial question of law. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP